

THE BRODSKY ORGANIZATION

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April 11, 1996

APR 12 1996

FCC MAIL ROOM

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Preemption of Local Zoning Regulation of Satellite
Earth Stations, IB Docket No. 95-59

Dear Mr. Caton:

I am writing to comment on the FCC's Report and Order and Further Notice of Proposed Rulemaking released on March 11, 1996, regarding preemption of certain local regulation of satellite earth station antennas, and proposing to prohibit enforcement of nongovernmental restrictions that are less than one meter in diameter (the "FNPRM"). An original and six copies are enclosed.

I am writing both as the Chairman of the Housing Committee of the Real Estate Board of New York (REBNY) and as a builder and owner of 6500 high rise multi-family housing units in Manhattan. REBNY represents the major owners, managers and builders of high rise rental and owner occupied apartment towers in New York City. The Brodsky Organization has recently built the 1000 unit West End Towers and is developing a 770 unit multi-family project, also in Manhattan. Together, these projects will contain over 350 units of low income housing in addition to the market rate rental units.

We are concerned that the proposed rule prohibiting enforcement of nongovernmental restrictions will adversely affect the conduct of our business without justification and needlessly raise additional legal issues. We question whether the Commission has the authority to require us to allow the physical invasion of our property in this way. It is imperative that we retain the authority to ~~control~~ the use of our property, for several reasons.

First of all, FNPRM incorrectly states that "nongovernmental restrictions would appear to be directed to aesthetic considerations." It is certainly true that aesthetic considerations play a part, but it is by no means the only concern. Nor are aesthetic considerations trivial -- the appearance of a building directly affects its marketability. People generally prefer to live in attractive buildings, and the sight of hundreds of satellite antennas bolted to the outside of apartments units would not be appealing to present and future residents. Thus, in the apartment market, aesthetic considerations are actually considerations.

OWNER/DEVELOPER

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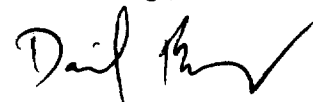
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Second, the indiscriminate placement of antennas on the exterior of our buildings will create safety and structural hazards, and may be prohibited by our municipal building codes for that reason. The weight or wind resistance of an antenna installed improperly on a balcony railing may weaken the railing, thus creating maintenance problems and -- more importantly -- a hazard to the safety of residents, building employees, and passers-by. Antennas mounted directly on a wall require the drilling of holes; if improperly sealed, water seeping into the holes may create structural deficiencies. There are many mechanisms that could cause such damage, including expansion upon freezing, corrosion of metal mounting elements, seepage into the interior of a building, or weakening of concrete through chemical reaction with substances carried in by the water. All of these possibilities will create new maintenance and repair costs in addition to the safety hazards.

Third, the technical limitations of satellite technology will create management problems because not all of our residents may be able to receive certain services. When residents on the south side of a building start subscribing to DBS, but residents on the north side cannot because there is no place to proposition an antenna to receive the signal, we will have to deal with the complaints. In New York City's highly regulated apartment market, providing only half of the residents of a building with a service will result in a tremendous complaints and regulatory agency interference. We will be powerless to address the situation, but will suffer increased costs as angry residents place additional demands on management or file complaints with the regulatory agencies.

In conclusion, we urge the FCC to avoid interfering in our relationships with our residents. All of the potential problems we cite will affect our bottom line and our property rights. Thank you for your attention to our concerns.

Sincerely,



Daniel Brodsky